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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,245	01/18/2002	Richard A. Desenna	81915-1300	7963
24504	7590	04/21/2004		
THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP 100 GALLERIA PARKWAY, NW STE 1750 ATLANTA, GA 30339-5948				
EXAMINER HAMLIN, DERRICK G				
ART UNIT 1751				
PAPER NUMBER				

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/051,245	Applicant(s) DESENNA ET AL.	
	Examiner Derrick G. Hamlin	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Evaluations of level of ordinary skill in the art requires consideration of factors such as various prior art approaches employed, types of problems encountered in the art, rapidity with which innovations are made, sophistication of technology involved, educational background of those actively working in the field, commercial success, failure of others, and the inventor's educational level.

The "person having ordinary skill" in this art has the capability of understanding the scientific and engineering principles applicable to the claimed invention. The references of record in this case reasonably reflect this level of skill.

Claims 1-21 and 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5958334 (Haddon).

Haddon discloses a solid combination of compounds capable of being packaged in a single, airtight container, and capable of forming an odor barrier for trapping/blocking odors, especially in relation to a toilet, urinal, etc., as is a method for its use. The combination comprises (i) a first component comprising an alkaline effervescent compound in solid form, (ii) a second component comprising an acid in

Art Unit: 1751

solid form, and (iii) an oxidizing agent in solid form, and at least one of the first component and second components comprise a stable foam-forming surfactant in solid form. (abstract) The reference teaches that the foam may optionally include substances that release smells such as perfumes and fragrances (col. 2, line 40). An alkaline effervescent compound is one that reacts with an acid, such as citric acid, oxalic acid, tartaric acid and adipic acid (col. 4, lines 6-46). Oxidizing agent may be included in the first and/or second components such as sodium hypochlorite, potassium hypochlorite, ammonium hypochlorite and when the other components of the combination are in solid form, an oxidising agent in solid form is used (eg in the form of granules, a powder, gel or a tablet) such as a sodium percarbonate, potassium percarbonate, ammonium percarbonate (col. 7, line 66 and col. 8, lines 1-32).

The reference fails to claim the instant pH.

Although the reference fails to teach the pH, the compositions are identical and a person of ordinary skill in the art would reasonably expect a composition that requires two acids to have an acidic pH.

Therefore it would have been obvious to create the instantly claimed compositions and method in view of the reference, as the reference discloses all of the components in the instantly claimed amounts and all of the required method steps.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11

Art Unit: 1751

F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-31 of U.S. Patent No. 6713441. Patented claims 1-23 relate to the instant claims 1-23. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both disclose an effervescent toilet bowl cleaner in powder granular, or tablet form, comprising: a chlorinated isocyanurate that comprises approximately 0.5 to 5% by weight of the cleaner; a lubricant wherein the lubricant is sodium benzoate, stearates, polyethylene glycols, mineral oil, silicates, and algenic acid; and 50 to 90% of an effervescent system that produces a foam level approximately one inch above a water line in a toilet bowl, wherein approximately 3 to 20% by weight of the cleaner is a binder is selected from polyethylene glycol, sorbitol, maltodextrin, and other sugars, wherein the cleaner is stored and packaged in a manner that prevents moisture from initiating premature decomposition of the cleaning components, the effervescent system comprises: an alkali metal carbonate; and an acid such as citric; maleic; fumaric; adipic; potassium phosphate, monobasic acids. An alkali metal carbonate is selected from sodium carbonate, sodium bicarbonate, potassium carbonate, and potassium

Art Unit: 1751

bicarbonate is disclosed and a surfactant mixture comprises approximately 0.1 to 5% mixture comprises one or more surfactants selected from alkylated, sulfonated diphenyl oxide; disodium salt; sodium lauryl sulphate; an alkyl benzene sulfonate, C.sub.12-20 ethoxylated alcohol; glycerin; an amine oxide; and a monoethanol amine etc. may be used. The compositions clearly are drawn to the same material.

With respect to the instant method claims, 24-29, the reference's commonly discloses a method of producing a toilet bowl cleaner in claims 24-31. The composition is in granular or tablet form, comprising the steps of: combining an effervescent system and a chlorinated isocyanurate, wherein the chlorinated isocyanurate comprises approximately 0.5 to 5% by weight of the cleaner; blending the pre-mix in a blender for approximately 15 to 20 minutes; adding a lubricant to the blended pre-mix; and blending the lubricant with the blended pre-mix for approximately three to four minutes to form a cleaner blend, wherein a surfactant such as alkylated, sulfonated diphenyl oxide; disodium salt; sodium lauryl sulphate; an alkyl benzene sulfonate; glycerin; an amine oxide; and a monoethanol amine may be used, followed by packaging the tablets in individual moisture-impervious pouches or further comprising the steps of: passing the granules over a classifier; separating the granules into classes of various sizes; and packaging the granules of the desired size in moisture-impervious pouches.

The reference fails to claim the instant pH, however the compositions are identical and a person of ordinary skill in the art would reasonable expect a composition that requires two acids to have an acidic pH.

Therefore it would have been obvious to create the instantly claimed compositions and method in view of the reference, as the reference discloses all of the components in the instantly claimed amounts and all of the required method steps.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derrick G. Hamlin whose telephone number is (571) 272-1317. The examiner can normally be reached on Monday-Fridays from ~8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Derrick G. Hamlin

4/18/04



**CHARLES BOYER**  
**PRIMARY EXAMINER**

